IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPLICATION [Ld.] NO. 29382 OF 2024
IN
ELECTION PETITION NO. 1 OF 2024

ANIL YESHWANT DESAI)
SHIV SENA (UBT))
Age – 66 years, Occupation - Ex.Mp Rs.)
Flat No. 101, Peacock Palace,)
Bhulabhai Desai Road,)
Breach Candy, Mumbai 400026.) **...Applicant.**

In the matter between :

MAHENDRA TULSHIRAM BHINGARDIVE)
RIGHT TO RECALL PARTY)
Age - 48 years, Occupation – Advocate,)
Adhar CHS Ltd., Flat - 301, A-Wing,)
MMRDA Colony, Panjarapol,)
Gautam Nagar, Din- Quarry Road,)
Deonar, Mumbai-400088.) **...Petitioner.**

Versus

1. ANIL YESHWANT DESAI)
SHIV SENA (UBT))
Age – 66years, Occupation - Ex.Mp Rs.)
Flat No. 101, Peacock Palace,)
Bhulabhai Desai Road,)
Breach Candy, Mumbai 400026.)

2. RAHUL RAMESH SHEWALE)
SHIV SENA (ES))
Age – 51 years, Occupation - Ex.MP LS.)
10-B/12, Shivtirth, Opp. New Mandala)
Gate No. 6, Sion Trombay Road,)
Mankhurd, Mumbai 400088.)

3. VIDYASAGAR BHIMRAO VIDYGAR)
BHAUJAN SAMAJ PARTY)
Age - 49 years, Occupation –)
Civil Contractor, Ashwagandha CHS Ltd.,)
Room No. 406, 4th Floor,)
Near Mankhurd Police Station,)

Mankhurd, Mumbai – 400043.)

4. ABUL HASAN KHAN)
VANCHIT BAHJUN PARTY)
Age - 53 years, Occupation - Business,)
Sabina Apartment, Flat No.101,)
1st Floor, Netaji Palkar Marg,)
Ghatkopar (West), Mumbai – 400084.)

5. DR. ARJUN MAHADEV MURUDKAR)
BHARTIYA JAWAN KISAN PARTY)
Age - 77 years, Occupation - Retired)
JMFC, 1502, 1, O.S. SR Lt. Dilip Gupte)
Marg, Near Hotel Goa Portugise,)
Matunga (West), Mumbai 400016.)

6. ISHWAR VILAS TATHAWADE)
RASHTRIYA MAHASWARAJ BHUMI PARTY)
Age – 47 years, Occupation - Reporter)
Someshwar CHS Ltd., Flat No.404/4,)
A/2, Yamuna, Khamdev Nagar,)
Joglekarnala, Sant Rohidas Marg,)
Dharavi, Mumbai – 400017.)

7. KARAM HUSSAIN KITABULLAH KHAN,)
PEACE PARTY)
Age-51 years, Occupation-Business,)
UAC-348, Building No. 14, GTB Nagar,)
Punjabi Colony, Sion- Koliwada, Antop Hill,)
Mumbai 400037.)

8. JAHID ALI NASIR AHMED SHAIKH)
AZAD SAMAJ PARTY (KASHIRAAM))
Age - 37 years, Occupation - Business,)
Room No.394, Sundaram,)
Sant Kankayya Marg, Dharavi,)
Mumbai 400017.)

9. DEEPAK M. CHAUGULE)
BAHUJAN REPUBLIC SOCIAL PARTY)
Age - 36 years, Occupation – PVT Service,)
MMM 324, Chakrawarti Mitra Mandal)
Suddhudhan Chawl, Mukund Nagar,)
Chembur (West), Mumbai – 400089.)

10. SAEED AHMED ABDUL WAHID CHOUDHARY)
SOCIAL DEMOCRATIC PARTY OF INDIA,)
Age – 49 years,)
Occupation- Business,)
Room No.523, SVP,)

Near Railway Colony Mahul,)
Vashi Naka, FCI, Chembur, Mumbai.)

11. ASHWINI KUMAR PATHAK)
INDEPENDENT)
Age – 39 years, Occupation – Advocate,)
305, Mahatma Fule Wadi,)
Korba Mithagar, Wadala (East),)
Mumbai 400037.)

12. AKASH LAXMAN KHARATMAL)
INDEPENDENT)
Age – 62 years, Occupation – BMC Retired,)
New Municipal Chawl, Chawl No. 6,)
Room No. 55, Sant Kankayya Marg,)
Dharavi, Mumbai 400017.)

13. VIVEK YASHWANT PATIL)
INDEPENDENT)
Age – 61 years, Occupation – Activist)
Brother's Society, Room No. A-26,)
Bhatiya Building,)
Lt. Dilip Gupta Path, Mahim,)
Mumbai – 400016.)

14. SANTOSH PUNJIRAM SANJKAR)
INDEPENDENT)
Age – 48 years, Occupation – Advocate)
Ashtvinayak Shakari Gruhnirman Santha,)
Building No. 168, Room No. 704,)
Opp. Tilak Nagar Police Station,)
Chembur, Mumbai 400089.)

15. ELECTION COMMISSION OF INDIA)
Nirvachan Sadan, Ashoka Road,)
New Delhi – 110001.) **...Respondents.**

Mr. Devdatt Kamat, Senior Advocate along with Mr. Ankit Lohia, Mr. Rubin Vakil, Mr. Rishit Vimaldalal., Mr. Harsh Pandey, Mr. Manish Doshi, Heena T, Ms. Isha Thakur, Gunjan Doiphode i/b Vimaldalal & Co., for the Applicant.

Mr. Mahendra T. Bhingardive, Petitioner in-person.

Ms. Iraa Dube Patil i/b Jay & Co., for the Respondent No. 3.

Mr. Abhijit P. Kulkarni, Mr. Gaurav Shahane, Mr. Shreyas Zarkar for the Respondent No. 15.

Coram : **Sharmila U. Deshmukh, J.**
Reserved on : **October 8, 2024**
Pronounced on : **October 15, 2024.**

ORDER :

1. The present application has been preferred by the returned candidate, who is arraigned as Respondent No.1 in the Election Petition, under Order VII Rule 11(a) of The Code of Civil Procedure, 1908 [for short, ***"CPC"***] read with Sections 81 and 82 of the Representation of the People Act, 1951 [for short ***"RP Act"***] seeking dismissal of Election Petition for non disclosure of cause of action.

RELEVANT PLEADINGS IN ELECTION PETITION:

2. The present Election Petition seeks a declaration that the nomination papers of the returned candidate as well as other candidates who had contested the election be declared as invalid, null and void as being defective, incomplete and invalid nomination papers and for an order declaring the Petitioner as elected candidate in the General Elections-2024 from the South Central Mumbai Parliamentary Constituency as per Sections 84 and 101 of the RP Act.

3. The allegations set out in paragraph 11 of the Election Petition in respect of the nomination papers of Respondent No.1-returned candidate are that oral objections were raised by the Petitioner during the scrutiny of the nomination papers- Affidavit (Form 26) as there

were few blank columns, signature was missing on the reverse of stamp paper and wrong information and incomplete information has been given in the Affidavit (Form 26). It is further alleged that the Returning Officer instructed the Petitioner to give his objections in writing and without giving any opportunity to furnish his written objections accepted the incomplete nomination papers of the returned candidate. It is further alleged that though the Respondent No.1 had filed 3 nomination papers only one single Affidavit (Form 26) was uploaded on the Election Commission of India's website by the Returning Officer.

4. Allegations of similar nature as regards blank columns, uploading of the Affidavit Form 26 multiple times on the website, no signature on reverse side of the stamp paper etc were made in respect of the nomination papers filed by the other 13 contesting candidates alleging that those were incomplete and defective and wrongfully and improperly accepted by the Returning Officer.

5. The objections as regards the present Applicant is given in tabular form in paragraph 16 of the Election Petition is reproduced below :

Candidate / the Respondent No. 1: Shri. Anil Yashwant Desai. Party : Shiv Sena (Uddhav Balasaheb Thakkre)	
Point No's.	Objections.

Part A	Affidavit Form 26 (stamp paper back side not signed by the candidate as per the guideline given) every page need to be signed.
Point No.4	Table 4th Column wordings (as on 31st March) is missing.
Point No.7B(iv)	Residential Building heading i. Dependent No.1 (daughter Ms. Rima Anil Desai) information wrongly mentioned as **Not Applicable** even though she had 20% share in the Residential Flat No.101, Peacock Palace. ii. Approximate Current Market Value heading – 4 Column's kept Blank (i.e., HUF, Dep 1, Dep2 and Dep3.)
Part B	
Serious Objection	**Affidavit Form 26, stamp paper bearing No.02B 647896, stamp vendor serial No. 325 (written on back of stamp paper) issued on 24.04.2024 is uploaded 3 times on Election Commission of India website, showing Uploading time on Election Commission site.** **1st Affidavit uploading time – 17:09:38; same stamp paper No. 02AB647896.** **2nd Affidavit uploading time – 17:19:08; same stamp paper No. 02AB647896.** **3rd Affidavit uploading time – 17:21:35; same stamp paper No. 02AB647896.**

APPLICATION UNDER ORDER VII RULE 11:

6. The application seeks dismissal of the Election Petition under Order VII Rule 11(a) of CPC for non-disclosure of cause of action read with Section 86 of RP Act for non-compliance with Sections 81 and 82 of RP Act majorly on the following grounds:

(a) Exhibit "G" to the Petition which is Affidavit (Form 26) of the Applicant has been verified by Petitioner as true copy, however there are interpolations on the document made by the Petitioner himself;

(b) For rejection of nomination papers under Section 36(4) of the RP Act, the defects have to be demonstrated to be of substantial nature by making a positive assertion in the Petition, which pleading is absent in the present Petition;

(c) Under sub clauses (i) to (iv) of Section 100(1)(d) of the RP Act, the election of a returned candidate can be declared void only if the result of election has been materially affected by any of the circumstances set out in those subclauses and therefore the petition must necessarily contain a pleading that the alleged improper acceptance of nomination papers or the alleged non compliance with the provisions of Constitution or RP Act or any Rules or orders made under the RP Act has materially affected the election of the Returned Candidate, which is absent in the present case;

(d) None of the alleged defects set out in paragraph 16 of the election petition are of substantial nature and there are no material facts pleaded;

(e) Under Section 81(1) of the RP Act, the election petition can be presented only on one or more of the grounds specified in Section 100(1) or Section 101 of RP Act and the petition does not set out any such ground;

(f) Section 83 of the RP Act prescribes that the contents of election petition referred to in Section 81 of RP Act shall comply with the provisions prescribed in Section 83 of RP Act and the present petition does not set out the material facts to form the basis of any alleged grounds for setting aside the election.

AFFIDAVIT IN REPLY :

7. The reply contends that certain objections were raised in respect of Exhibit "G" not being true copy and it is admitted the markings were done by the Petitioner himself and the same was accidentally attached to the Petition and thus marked as true copy under the signature of Petitioner. There is substantial compliance of Section 81 of RP Act and the true copies of Affidavit (Form 26) are identical with the copies uploaded on the Election Commission of India's website. The defect is curable and will not prejudice the defence of the Respondents.

8. It is further contended that keeping blank columns in the Affidavit (Form 26) is a defect of substantial nature and acceptance of the said affidavit by the Returning Officer gives rise to a cause of action which is mentioned in the Election Petition.

SUBMISSIONS:

9. Mr. Kamat, learned Senior Advocate appearing for the Applicant-Returned Candidate would submit that the Petitioner has secured

1,444 votes in 2024 Lok Sabha elections and by present petition seeks invalidation of the nomination papers of the Returned Candidate who secured 3,95,138 votes and also of other contesting candidates. He would further submit that the Election Petition does not comply with Section 84 of the RP Act as the Petition does not seek a declaration that the election of the Returned Candidates is void. He would further submit that the Election Petition is non compliant with Section 82 of the RP Act as apart from the parties mentioned in Section 82 of RP Act, the Election Commission of India is added as party Respondent, being Respondent No.15, and therefore the petition deserves to be dismissed under Section 86 of the RP Act. According to Mr. Kamat, the absence of pleading of material facts to demonstrate that the election has been materially affected by improper acceptance of the nomination papers constitutes a fatal and incurable defect going to the root of the matter.

10. He would further submit that in case of an election being contested by more than two candidates, if the nomination of candidates other than the returned candidate is found to have been improperly accepted, it is essential for the Election Petitioner to plead and prove that the votes polled in favour of such candidates would have been polled in his favour. He submits that there are no such pleadings in the present case.

11. He has taken this Court through the alleged defects in Affidavit Form 26 as pleaded and would submit that there is compliance with the applicable rules and there is no defect whatsoever. He would further submit that assuming Affidavit Form 26 suffered from defects, unless they are shown to be of substantial character by positive assertion, there cannot be invalidation of election and what has to be seen is substantial compliance with the requirement of the Form.

12. He has taken this Court one by one through the alleged defects and has responded to each one of them substantiating that the same do not constitute any defect much less defect of substantial character. As regards the objection of uploading of one affidavit whereas there are 3 nominations filed by the returned candidate, he submits that as per Clause 1.3 read with clause 5.20.3 of the Handbook for Returning Officer 2023 the uploading of affidavit on the website of Election Commission of India is not done by the candidate but done by the Returning Officer himself and illegality, if any, in uploading the document cannot be construed as a defect in the submission of nomination papers by the said candidate. In support of his contentions he relies upon the following decisions:

[a] ***Jyoti Basu v. Debi Ghosal*** [1]

[b] ***Dharmin Bai Kashyap v. Babli Sahu***[2]

1 [(1982) 1 SCC 691]

[c] ***Mangani Lal Mandal v. Bishnu Deo Bhandari***[3]

[d] ***Shambhu Prasad Sharma v. Charandas Mahant***[4]

[e] ***Mairembam Prithviraj v. Pukhrem Sharatchandra Singh***[5]

[f] ***Kanimozhi Karunanidhi v. A. Santhana Kumar***[6]

[g] ***Karim Uddin Barbhuya v. Aminul Haque Laskar***[7]

[h] ***Karikho Kri v. Nuney Tayang***[8]

[i] ***Satya Narain v. Dhuja Ram***[9]

[j] ***Ramgareb v. Ajay Arjun Singh***[10]

13. On the aspect of amendment application filed separately by the Petitioner, he submits that the copy of amended petition will have to be supplied to the Applicant as a sequitur of allowing the interim application which will be beyond the period of limitation for questioning the election and therefore the interim application also cannot be allowed.

14. Mr. Bhingardive, Petitioner in-person would point out that Clause 4.5 of the Handbook for Candidate, 2023 provides for rejection of nomination paper if the candidate fails to furnish nomination papers and the affidavit in the prescribed format, and where the columns are kept blank in the affidavit and fresh affidavit not filed in spite of

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2 [(2023) 10 SCC 461];
3 [(2012) 3 SCC 314]
4 [(2012) 11 SCC 390]
5 [(2017) 2 SCC 487]
6 [2023 SCC OnLine SC 573]
7 [2024 SCC OnLine SC 509]
8 [2024 SCC OnLine SC 519]
9 [(1974) 4 SCC 237]
10 [MP High Court's order dtd 22-8-2024 in E.P. No. 6 of 2024.]

notice. He would therefore submit that as there were blanks in the Affidavit (Form 26) there is a cause of action and the election petition cannot be dismissed under Order 7 Rule 11(a) of CPC.

REASONS AND ANALYSIS:

STATUTORY FRAMEWORK:

15. Before turning to the facts of the present case, it will be apposite to have a look at the statutory provisions contained in Part-VI of the RP Act which deals with disputes regarding Elections. Section 80 of the RP Act provides that no election shall be called in question except by an election petition presented in accordance with the provisions of Part-VI. Section 81, 82, 83, 86 and 100 of RP Act reads as under:

> **"81. Presentation of petitions.**—(1) An election petition calling in question any election may be presented on one or more of the grounds specified in sub-section (1) of section 100 and section 101 to the High Court by any candidate at such election or any elector within forty-five days from, but not earlier than the date of election of the returned candidate, or if there are more than one returned candidate at the election and the dates of their election are different, the later of those two dates."
>
> **"82. Parties to the petition.**— A petitioner shall join as respondents to his petition—
>
> (a) where the petitioner, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner, and

where no such further declaration is claimed, all the returned candidates; and

(b) any other candidate against whom allegations of any corrupt practice are made in the petition."

"**83. Contents of petition.**—(1) An election petition—
(a) shall contain a concise statement of the material facts on which the petitioner relies;

(b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings:

Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition."

"86. Trial of election petitions.— (1) The High Court shall dismiss an election petition which does not comply with the provisions of section 81 or section 82 or section 117.

Explanation.—An order of the High Court dismissing an election petition under this sub-section shall be deemed to be an order made under clause (a) of section 98.

(2) …...

(3) …

(4) ….

(5) ….

(6) ….

(7) …..”

“100. Grounds for declaring election to be void.— (1) Subject to the provisions of sub-section (2) if the High Court is of opinion—

(a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act or the Government of Union Territories Act, 1963 (20 of 1963); or

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or

(c) that any nomination has been improperly rejected; or

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected—

(i) by the improper acceptance or any nomination, or
(ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent, or
(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or
(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or

> orders made under this Act, the High Court shall declare the election of the returned candidate to be void
>
> (2) If in the opinion of the High Court, a returned candidate has been guilty by an agent, other than his election agent, of any corrupt practice but the High Court is satisfied—
>
> (a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and without the consent, of the candidate or his election agent;
>
> (c) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election; and
>
> (d) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents, then the High Court may decide that the election of the returned candidate is not void."

16. The statutory framework that emerges from the provisions reproduced above is that for the purpose of declaring an election to be void, on the grounds as set out in Sub-Section (1) of Section 100 of RP Act, a Petition is to be presented to the High Court within a period of forty five days from the date of election containing a concise statement of material facts on which the Petitioner relies, which Petition shall implead as parties all the contesting candidates where the Petitioner seeks a declaration that he himself or another

candidates has been duly elected and otherwise the Returned Candidate. Section 86 of RP Act provides for dismissal of the Petition for non compliance with the provisions of Section 81 or Section 82 or Section 117. Section 117 provides for security deposit for costs of the Petition.

17. Relevant for our purpose is to note that Section 100(1)(d) of RP Act provides for declaration of the election of returned candidate to be void where there is improper acceptance of any nomination or non compliance with the provisions of the Constitution or of the RP Act or of rules or orders made under the RP Act which has the effect of materially affecting the result of election.

NON DISCLOSURE OF CAUSE OF ACTION:

18. Reverting to the present application, filed under Order VII Rule 11(a) of CPC, the same seeks rejection of plaint for non disclosure of cause of action. Section 81 restricts the challenge to any election only on the grounds set out in Section 100(1) and Section 101 of RP Act. In the present Petition, the cause of action for questioning the election are the grounds under sub clauses (i) and (iv) of Clause (d) of Sub Section (1) of Section 100 of RP Act by reason of improper acceptance of the nomination of not only the Returned Candidate but also of all the contesting candidate and for non-compliance with the provisions of the Act and Rules.

19. The specific contention of Mr. Kamat is that the absence of positive assertion in the Petition demonstrating that by virtue of the alleged improper acceptance of any nomination or non compliance with the provisions, the election of the returned candidate has been materially affected, is fatal to the Petition. Before examining the pleadings in the election petition, it will be apposite to have a look at the judicial pronouncements on the subject.

20. In ***Mangani Lal Mandal*** (supra) the Apex Court was considering the case where the election of returned candidate was challenged on the ground that there was a suppression of information about the returned candidate having two wives and dependent children from his first wife in the affidavit filed and the challenge was brought under Section 100(1)(d)(iv) of the RP Act. The Apex Court held in paragraph 11 as under:

> "A mere non compliance or breach of the Constitution or the statutory provisions noticed above, by itself, does not result in invalidating the election of a returned candidate under Section 100(1)(d)(iv). The *sine qua non* for declaring the election of returned candidate to be void under Clause (iv) of Section 100(1)(d) of RP Act, is further proof of the fact that such breach or non observance has resulted in materially affecting the result of the returned candidate. In other words, the violation or breach or non observation or non compliance with the provisions of Constitution or 1951 Act or the rules or the orders made thereunder, by itself, does not render the election of a returned candidate void Section 100(1)(d)(iv). <u>For the election petitioner to succeed on such ground viz Section 100(1)(d)(iv), he has not only to plead and prove the ground but also that the result of the election in so far as it concerned the returned candidate has been materially affected.</u> The view that we have taken finds support from three decisions of this Court in *(1) Jabar Singh vs Genda Lal (2) L.R. Shivaramagowda vs*

> *T.M. Chandrashekhar and (3) Uma Ballav Rath vs Maheshwar Mohanty.*" (Emphasis supplied).

21. The Apex Court in that case expressed surprise about the decision of the High Court and further held that as a matter of law, the election petition filed by the election petitioner deserved dismissal at the threshold yet it went into whole trial consuming precious time and putting the returned candidate to unnecessary trouble and inconvenience.

22. In ***Kanimozhi Karunanidhi*** (supra) the Apex Court after considering the provisions of RP Act noted the decision in the case of ***Ram Sukh v. Dinesh Aggarwal***[11] in the context of Section 100(1)(d)(iv) of the RP Act where it was observed that it is necessary for the election Petitioner to aver specifically in what manner the result of election insofar as it concerns the returned candidate was materially affected due to the omission on the part of Returning Officer and as the averments were missing in the election petition, the rejection of election petition at the threshold was upheld.

23. In the case of ***Karim Uddin Barbhuya*** (supra) the Apex Court held in paragraph 22 to 24 as under:

> "22. So far as the ground contained in clause (d) of Section 100(1) of the Act, with regard to improper acceptance of the nomination of the Appellant is concerned, there is not a single averment made in the Election Petition as to how the result of the election, in so far as the appellant

11 [AIR 2010 SC 1227]

was concerned, was materially affected by improper acceptance of his nomination, so as to constitute a cause of action under Section 100(1)(d)(i) of the Act. Though it is true that the Election Petitioner is not required to state as to how corrupt practice had materially affected the result of the election, nonetheless it is mandatory to state when the clause (d)(i) of Section 100(1) is invoked as to how the result of election was materially affected by improper acceptance of the nomination form of the Appellant.

23. As transpiring from the Election Petition, the respondent no. 1 himself had not raised any objection in writing against the nomination filed by the Appellant, at the time of scrutiny made by the Returning Officer under Section 36 of the Act. According to him, he had raised oral objection with regard to the education qualification stated by the Appellant in the Affidavit in Form-26. If he could make oral objection, he could as well, have made objection in writing against the acceptance of nomination of the Appellant, and in that case the Returning Officer would have decided his objection under sub-section (2) of Section 36, after holding a summary inquiry. Even if it is accepted that he had raised an oral objection with regard to the educational qualification of the Appellant before the Returning Officer at the time of scrutiny, the respondent no.1 has failed to make averment in the Election Petition as to how Appellant's nomination was liable to be rejected by the Returning Officer on the grounds mentioned in Section 36(2) of the Act, so as to make his case fall under clause (d)(i) of Section 100(1) that there was improper acceptance of the nomination of the Appellant. The non-mentioning of the particulars as to how such improper acceptance of nomination had materially affected the result of the election, is apparent on the face of the Election Petition.

24. As stated earlier, in Election Petition, the pleadings have to be precise, specific and unambiguous. If the allegations contained in Election Petition do not set out grounds as contemplated in Section 100 and do not conform to the requirement of Section 81 and 83 of the Act, the Election Petition is liable to be rejected under Order VII, Rule 11 of CPC. An omission of a single material fact leading to an incomplete cause of action or omission to contain a concise statement of material facts on which the Election petitioner relies for establishing a cause of action, would entail rejection of Election Petition under Order VII Rule 11 read with Section 83 and 87 of the RP Act."

24. In the case of ***Mairembam Prithviraj*** (supra) the Apex Court

noted the the decision in the case of ***Durai Muthuswami v. N. Nachiappan***[12] in which case there were only two contesting candidates and the Apex Court held that in such event it is not necessary to allege that the result of the election inso far as it concerns the returned candidate has been materially affected. However, where there are more than two contesting candidates and nomination of one of the defeated candidates had been improperly accepted, it is necessary for the person challenging the election not merely to allege but also to prove that the result of election had been materially affected by the improper acceptance of the nomination of other defeated candidate. The Bench in ***Mairembam Prithviraj*** (supra) held that there is a difference between improper acceptance of nomination of returned candidate and improper acceptance of nomination of any other candidate. There is also a difference between cases where there are only 2 candidates in the fray and a situation where there are more than 2 candidates contesting the election. If the nomination of a candidate other than the returned candidate is found to have been improperly accepted, it is essential that the Election Petitioner has to plead and prove that the votes polled in favour of such candidate would have been polled in his favour. On the other hand, if the improper acceptance of nomination is of the returned candidate there is no

12 [(1973) 2 SCC 45].

necessity of proof that the election has been materially affected as returned candidate would not have been able to contest the election if his nomination was not accepted. It is not necessary for the Respondent to prove that the result of election in so far as it concerns the returned candidate has been materially affected by the improper acceptance of his nomination as there were only 2 candidates in that case contesting the election and if the Appellant's nomination is declared to have been improperly accepted his election would have to be set aside without any further inquiry and the only candidate left in the fray is entitled to be declared elected.

25. In the case of ***Mahadeorao Sukaji Shivnakar v. Ramratan Bapu***[13] the Apex Court held that the material facts are all basic and primary facts which must be proved at trial by the party to establish the existence of cause of action or defence and must be stated in a pleading by the party. The cause of action should be specifically mentioned in the election petition.

26. Bearing in mind the aforestated settled legal position, I have minutely gone through the pleadings in the Petition. Paragraphs 11 and 13 of the Petition set out the allegations against the Returning Officer for not dealing with the oral objections raised by the Petitioner to the Nomination papers- Affidavit (Form 26) of the Returned

13 [(2004) 7 SCC 181]

Candidate. Paragraph 16 of the Petition pleads the alleged defects in the Affidavit (Form 26) of the Returned Candidate and the contesting candidates. After alleging that the nomination papers of the Returned Candidate were defective and incomplete, the Petition sets out in tabular form the alleged defects in Affidavit Form 26. Upon my reading of the entire petition, there is not even a whisper as to the manner in which the improper acceptance of nomination has materially affected the election. A pleading in that respect is essential to disclose a cause of action for questioning the election. To constitute a cause of action under Section 100(1)(d)(i) and (iv), there has to be satisfaction of twin requirement. Firstly, that there has been an improper acceptance of nomination papers and non compliance with the Constitution or the statutory provisions or Rules or orders and secondly that the same has resulted in the election results being materially affected. For showing improper acceptance of the nomination papers, there has to be a pleading of material facts in the Petition to demonstrate that the concerned candidates nomination was liable to be rejected by the Returning Officer on the grounds mentioned in Section 36(2) of the Act so as to constitute cause of action under Section 100(1)(d)(i) and to plead and establish that the same has resulted in materially affecting the result of the election. In the present case, the Petition is completely silent on both the aspects.

De-hors any pleading on material facts, the petition does not disclose any cause of action.

DEFECTS ALLEGED NOT OF SUBSTANTIAL NATURE:

27. Sub Section (4) of Section 36 prohibits the rejection of nomination paper except where the defect is of substantial character. The defects alleged are as regards the Affidavit -Form 26 filed by the candidates including the Returned Candidate alongwith the nomination paper, which is required to be in the format prescribed by Rule 4A of The Conduct of Election Rules, 1961.

28. To attract the consequence of rejection of nomination paper by the Returning Officer, the defects alleged in Affidavit Form 26 have to shown to be of substantial character by necessary pleadings in that respect. In the present case, only the alleged defects are set out in tabular form without any supporting pleading to substantiate that the alleged defects are of substantial character for it is not each and every lapse or defect which will lead to rejection of nomination. Despite the petition being *de hors* any pleading on material facts, I have considered the alleged defects as reproduced in the Petition in tabular form *ad seriatim.*

(a) The Affidavit (Form 26) is not signed by the candidate;

(b) In the 4th column of Point No. 4, the words "as on 31st March" are missing;

(c) In Point No.7B(iv), information in respect of immovable property of the Dependent is shown as “Not Applicable” whereas the returned candidate’s daughter has 20% share in the residential flat; similarly the “approximate market value” columns have been kept blank as far as the HUF and Dependents are concerned;

(d) Affidavit (Form 26) was uploaded thrice on the website of Election Commission of India.

29. As far as the reverse of the stamp paper not being signed by the candidate, the reverse of the stamp paper has the stamp of General Stamp Officer and does not contain any information filled in by the candidate. Even if it is accepted that every page is required to be signed, the same would essentially apply to the pages which contains any information filled in by the candidate.

30. As regards the words “31st March” missing from Point No. 4 of Form 26, in the heading of the 4th column of Point No 4, as per the RP Act publication by “Law and Justice Publishing” of the year 2023, the prescribed Form 26 does not contain any such words in Column 4 of Point 4. In any event, in the 4th Column the Returned Candidate has given the details of the income shown in the income tax returns for the last 5 financial years and refers to financial years 2018-19 upto financial year 2022-23. Considering that the reference is to the financial year, the mere non reproduction of the words “as on 31st March” does not

make any difference. Most pertinently in Point No 4, the Column of HUF and Dependents are filled in as “Not Applicable” indicating that there is no HUF and no Dependents in light of the definition of the expression “Dependent” being defined in Point No 7 as a person who has no separate means of income and who is Dependent on the candidate for their livelihood. The same assumes significance while considering the details as regards the immovable assets included in Point No.7B(iv).

31. The next objection in respect of Point 7B(iv) is that although the daughter of the Returned Candidate is having 20% share in residential flat, in dependent column, the same is mentioned as “Not Applicable”. Considering that in Point 4, the Returned Candidate has stated that there are no dependents, there is no question of dependent’s share in the immovable property to be filled in the dependent’s column particularly when in the 1st Column of Point 7B(iv), pertaining to the self owned property, the residential flat is shown to be jointly owned by the Returned Candidate along with the spouse and the daughter. Similarly, as regards the approximate current value, which is also forming part of Point No. 7B, as there were no HUF and Dependents, the columns have been left blank and the approximate value has been shown in the column related to self and spouse.

32. Although upon a holistic perusal of Affidavit Form 26 in light of

the objections raised, I am of the opinion that there are no defects in Affidavit Form 26, even assuming them to be defects, to entail the rejection of nomination papers, the defects have to be of a substantial character. As to what would constitute defect of substantial character so as to taint the nomination has been subject matter of several decisions referred hereinunder.

33. In the case of ***Ramgareb v. Ajay Arjun Singh*** (supra) the High Court of Madhya Pradesh was considering an issue where the correct and complete information was alleged to not have been furnished at the time of submission of nomination papers as well as in the affidavit submitted in Form 26 as there were certain blank columns kept in the nomination papers. The High Court held that mere minor differences in the nomination paper or non disclosure of some information regarding dues cannot be said to be a substantial defect so as to materially affect the result of election.

34. In the case of ***Karikho Kri*** (supra) there was non disclosure as regards certain motorcycles owned by the returned candidate. The Apex Court considered the issue as what would be the defects that would taint a nomination to the extent of rendering its acceptance improper. The Apex Court held that whether the non disclosure amounts to a material lapse impacting election of the returned candidate would depend on the facts and circumstances of each case.

The Apex Court held that every defect in the nomination cannot straight away be termed to be of such character as to render its acceptance improper and each case would have to turn on its own individual facts in so far as that aspect is concerned. The very fact that Section 36(4) of the RP Act speaks of the Returning Officer not rejecting a nomination unless he is of the opinion that the defect is of substantial nature demonstrates that the distinction must always be kept in mind and there is no absolute mandate that every non disclosure irrespective of its gravity and impact would automatically amount to a defect of substantial nature thereby materially affecting the result of election or amounting to undue influence so as to qualify as a corrupt practice. The Apex Court in that case did not accept the blanket proposition that a candidate is required to lay his life out threadbare for examination by the electorate and every case will have to turn on its own peculiarities as to when non disclosure of each and every asset owned by a candidate would amount to a defect of substantial character. In that case, the well settled proposition was reiterated that it is necessary for the election Petitioner to plead that the result of election in so far as it concerns the returned candidate has been materially affected by the alleged non compliance with the provisions of Constitution or the RP Act and the failure to plead such material facts would be fatal to the election petition.

35. In ***Shambhu Prasad Sharma*** (supra) the Apex Court observed that the election petition did not make any averment, leave alone disclose any material fact and the objections were thus in the nature of an objection to the form rather than to the substance of affidavit. The Apex Court held that the form of nomination paper is not considered sacrosanct and every departure from the prescribed format cannot therefore be a ground for rejection of the nomination paper.

36. In the present case, the Returning Officer had scrutinized the nomination form and the Affidavit and accepted the same without finding any defect of substantial character. It is evident that the whole purpose of filing an affidavit is to make known to the electorate, the criminal antecedents, assets and liabilities as well as the educational qualification of contesting candidate so as to enable the voters to take an informed decision. It is not the case of the Petitioner that by reason of the blanks / non supply of information, there has been suppression of any information or any wrong information has been put in public domain. In the present case, the Petition does not have a single averment as to how the alleged lapses/defects are of substantial character and has resulted in violation of fundamental right of the citizen to know the true facts and information of the contesting candidate. It was necessary to plead the consequence of alleged defects impacting the information which is required to be put in public

domain by the contesting candidate.

37. The Petition alleges that the Returned Candidate had filed three nomination papers and only one Affidavit Form 26, which was uploaded thrice on Election Commissioner website. Section 33(6) of the RP Act provides that there is no bar to a candidate for being nominated by more than one nomination paper. Mr. Kamat is right in pointing out the Handbook for the Returning Officer which provides in Clause 1.3 that it is the duty of Returning Officer to publish the affidavits of candidates and to display the copies of nomination papers and affidavits on the notice board on the same day on which the nomination has been filed. The objection to the uploading of affidavits 3 times cannot constitute a ground for improper acceptance of the nomination paper so as to materially affect the result of election. The allegation is that 3 nomination papers were filed but only one affidavit has been uploaded. There is no provision pointed out to this Court that along with every nomination paper there has to be a separate affidavit. In fact there is no pleading that only one Affidavit was filed in respect of three nomination papers. The allegation is that only one affidavit was uploaded on the Election Commission of India's website thrice by the Returning Officer, in which case the default was on the part of Returning Officer and not of the candidate.

NON COMPLIANCE OF SECTION 81 OF RP ACT:

38. Coming to the requirement of Section 81 of RP Act, Section 81 provides that the election petition may be presented on one or more of the grounds specified in Sub-Section (1) of Section 100 and Section 101 to the High Court within period of 45 days and Section 83 provides that the Petition shall contain a concise statement of material facts on which the Petitioner relies. Section 83 when read conjointly with Section 81 of RP Act, the position that emerges is that the Election Petition should contain the facts which are material to demonstrate the cause of action on grounds specified under Sub-Section (1) of Section 100 of RP Act. The Petition in present case not pleading material facts, constitutes non compliance of Section 81 of RP Act entailing consequence of dismissal under Section 86 of RP Act.

39. Further, the Petitioner has not sought any relief that the election of returned candidate be declared as void and the only relief sought is an order declaring as null and void the nomination papers of the returned candidate and other contesting candidates. The provisions of Section 81 of the RP Act provides that the election can be called into question within a period of 45 days from the date of election of the returned candidate. As in the present case there is no relief seeking declaration of the election being void, after the expiry of period of 45 days, the Petition cannot be amended to seek the declaration. Without

calling in question the election, the petition could not have been filed under Section 81 of RP Act.

40. In the case of ***Jyoti Basu*** (supra) while dealing with an election petition, the Apex Court considered the provisions of RP Act and held that a right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a common law right. Outside of statute, there is no right to elect, no right to be elected and no right to dispute an election. Statutory creations they are, and therefore, subject to statutory limitation. An election proceeding to which neither the common law nor the principles of equity apply but only those rules which the statute makes and applies.

41. There thus has to be strict compliance with the requirements of the statutory provisions as outside the statutory provisions there is no right to dispute an election. The RP Act has been held to be a complete and self contained code within which must be found any right claimed in relation to an election or election dispute. Considering that in an election petition, pleadings have to be specific, precise and unambiguous as contemplated by Section 83 of the RP Act, if the election petition does not disclose a cause of action it is liable to be dismissed in *limine*.

42. Upon meaningful reading of the Petition, in my view, the Petition does not disclose cause of action under Section 100(1)(d) (i) and (iv) of

RP Act to maintain the Election Petition and is also liable to be rejected for non-compliance of Section 81 for the following reasons :

(a) There is no pleading of material facts in the Petition to demonstrate that by reason of alleged defects pleaded, the Returned Candidate's nomination was liable to be rejected by the Returning Officer under Section 36(2) of RP Act so as to constitute cause of action under Section 100(1)(d)(i) and (iv) of RP Act.

(b) There is no averment in the Petition as to the manner in which by reason of improper acceptance of the nomination paper of the Returned Candidate, the result of the Election has been materially affected.

(c) The pleadings do not make out a case that the alleged defects in Affidavit Form 26 are of substantial character so as to be rejected by the Returning Officer under Section 36(3) of RP Act.

(d) Section 83 of RP Act requires the Election Petition to contain a concise statement of material facts. In absence of material facts being pleaded in the Petition, the provisions of Section 81 which provides for presentation of Election Petition on the grounds set out in Sub-Section (1) of Section 100 and Section 101 of RP Act, the Petition is non-compliant with

Section 81 of RP Act entailing dismissal of the Petition under Section 86 of RP Act.

(e) There is no declaration sought that the election be declared void and in absence of any such declaration, it cannot be said that the Petition questions the Election and the Petition is non-compliant with Section 81 of RP Act.

43. The Election petition is therefore liable to be rejected under Order 7 Rule 11 of CPC and is accordingly rejected. Interim Application stands allowed.

44. In view of the dismissal of Election Petition, Application bearing AEP (Ld.) No.27861 of 2024 seeking amendment of Petition stands dismissed. This Court is informed that after the matter was reserved for orders on the present Application, an Interim Application has been filed by the Petitioner. However, the same has not been circulated before this Court. In view of the dismissal of Election Petition, the Interim Application bearing AEP (Ld.) No.31211 of 2024 also stands dismissed.

[Sharmila U. Deshmukh, J.]